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VETO—SENATE JOINT RESOLUTION 113

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

RETURNING

WITHOUT MY APPROVAL SENATE JOINT RESOLUTION 113, A JOINT RESOLUTION THAT WOULD PROHIBIT THE EXPORT OF CERTAIN TECHNOLOGY, DEFENSE ARTICLES, AND DEFENSE SERVICES IN CONNECTION WITH THE CODEVELOPMENT AND COPRODUCTION OF THE FS-X AIRCRAFT WITH JAPAN

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To the Senate of the United States:

I am returning without my approval Senate Joint Resolution 113, a joint resolution that would prohibit the export of certain technology, defense articles, and defense services in connection with the codevelopment and coproduction of the FS–X aircraft with Japan. The resolution is neither necessary to protect the interest of the United States, nor consistent with long-standing requirements of the Arms Export Control Act. Further, the resolution contains binding provisions that unconstitutionally infringe on the powers of the Executive.

I am committed to the protection of U.S. security, economic, and technological interests. Shortly after assuming this Office, I directed that a review of the FS–X program be undertaken to reassess its impact on the United States. This evaluation included active participation by the Departments of State, Defense, and Commerce, and the Office of the U.S. Trade Representative, among other agencies. Following the review, we reopened discussions with the Japanese and clarifications were made to ensure that valid U.S. concerns and requirements were met in such areas as U.S. workshare and technology flowback.

With agreement reached on these clarifications, I decided that we should proceed with the joint development of the FS–X aircraft. I determined that the program is in the strategic and commercial interest of the United States and will contribute to our security and that of a major ally. The ability of Japan to carry its share of the defense burden will be enhanced as a result of the program, at no cost to the American taxpayer. Moreover, the program will produce substantial work for the U.S. aerospace industry without jeopardizing our commitment to the continued excellence of that industry. The U.S. economy will gain some $2.5 billion and 22,700 man years of employment over the course of the codevelopment and coproduction phases.

I remain fully convinced that proceeding with the program is in the best interests of the United States and that the additional conditions prescribed in this resolution are unnecessary. Such conditions include an unprecedented absolute prohibition on sales or retransfers of the FS–X weapon system or any of its major subcomponents codeveloped or coproduced with the United States. This prohibition is inconsistent with the current agreement with Japan and goes beyond the current requirements of the Arms Export Control Act, which permit such sales or retransfers, but only if the written approval of the United States Government is first obtained. This requirement of prior consent completely protects U.S. security and other interests.

The resolution also conflicts with the President's proper authority under the Constitution. The Constitution vests executive power in the President. Executive power includes the exclusive authority

to conduct negotiations on behalf of the United States with foreign governments. S.J. Res. 113 violates this fundamental constitutional principle by purporting—in binding legislative language—to direct the United States and Japan to conduct negotiations if coproduction of the FS–X is sought, and by purporting to define in advance both the form and substance of any resulting agreement. In the conduct of negotiations with foreign governments, it is imperative that the United States speak with one voice. The Constitution provides that the one voice is the President's. While of course the Congress has authority under the Constitution to regulate commerce with foreign nations, it may not use that authority to intrude into areas entrusted by the Constitution exclusively to the Executive. And while I am eager to cooperate with Congress in shaping a sound foreign policy for our Nation, and will consult with Members of Congress at every opportunity—indeed, the ultimate shape of the agreement with Japan reflects healthy cooperation between our two branches—I cannot accept binding provisions like those in Senate Joint Resolution 113 that would tie my hands in the exercise of my constitutional responsibilities.

The Constitution's vesting of executive power in the President requires that the President exercise supervisory authority and control over the internal deliberations of the Executive branch. The resolution intrudes on this constitutional principle by purporting to direct a particular Executive department to solicit and consider comments or recommendations from another department and to make certain recommendations to the President. The resolution also purports to require the President to consider these recommendations. Such provisions interfere with Executive branch management and infringe on the President's authority with respect to deliberations incident to the exercise of Executive power.

The reporting requirement imposed by this resolution would inject the General Accounting Office, a legislative entity, into the execution of the FS–X program in a highly intrusive manner. It would require the GAO, for example, to track within the Japanese aerospace industry all applications of technology involved in the development of the FS–X, including technology developed solely by Japan. Such a role, tantamount to intelligence gathering, is inappropriate for a legislative entity, and poses the clear and significant risk of legislative entanglement in functions assigned under our Constitution to the Executive branch.

The FS–X program is the first major military codevelopment program between the United States and Japan. The FS–X will bolster Japan's self-defense capability, strengthen our overall alliance with Japan, and allow Japan to assume a larger share of the common defense burden. The importance of these achievements cannot be overstated, particularly given the fact that our relationship with Japan is a foundation for our political and strategic relations throughout the Pacific.

To reopen discussions now for additional and needless changes can only damage the prospects for a successful agreement. If this occurs, substantial injury to the U.S.-Japan security relationship is likely and the considerable strategic and commercial benefits to the United States will be lost. This compromising of U.S. interests is simply not acceptable.

Finally, acceptance of this resolution would constitute a setback in our objective of achieving a close working relationship and mutual respect between our two branches through the minimization of legislative micromanagement of both foreign affairs and Executive branch internal deliberations.

For all the reasons stated above, I am compelled to disapprove Senate Joint Resolution 113.

GEORGE BUSH.

THE WHITE HOUSE, *July 31, 1989.*

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